Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2016/0362(COD)	Procedure completed

Bank recovery and resolution: loss-absorbing and recapitalisation capacity of credit institutions and investment firms

Amending Directive 98/26/EC 1996/0126(COD)
Amending Directive 2002/47/EC 2001/0086(COD)
Amending Directive 2004/25/EC 2002/0240(COD)
Amending Directive 2005/56/EC 2003/0277(COD)
Amending Directive 2007/36/EC 2005/0265(COD)
Amending Directive 2011/35/EU 2008/0009(COD)
Amending Directive 2012/30/EU 2011/0011(COD)
Amending Directive 2014/59/EU 2012/0150(COD)

Subject
2.50.03 Securities and financial markets, stock exchange, CIUTS, investments
2.50.04 Banks and credit
2.50.08 Financial services, financial reporting and auditing
2.50.10 Financial supervision

Legislative priorities
Joint Declaration 2017
Joint Declaration 2018-19

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		24/11/2016
		HÖKMARK Gunnar	
		Shadow rapporteur	
		SILVA PEREIRA Pedro	
		KAMALL Syed	
		CORNILLET Thierry	
		LAMBERTS Philippe	
		VALLI Marco	
		ZANNI Marco	
	Committee for opinion	Rapporteur for opinion	Appointed
	EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
	ITRE Industry, Research and Energy	The committee decided not to give an opinion.	

	JURI Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Agriculture and Fisheries	3689	14/05/2019
	Economic and Financial Affairs ECOFIN	3619	25/05/2018
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis	
European Economic and Social Committee			

Key events

23/11/2016	Legislative proposal published	COM(2016)0852	Summary
01/02/2017	Committee referral announced in Parliament, 1st reading		
19/06/2018	Vote in committee, 1st reading		
19/06/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
25/06/2018	Committee report tabled for plenary, 1st reading	A8-0218/2018	Summary
02/07/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
04/07/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
26/02/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE636.102 GEDA/A/(2019)001585	
15/04/2019	Debate in Parliament		
16/04/2019	Results of vote in Parliament		
16/04/2019	Decision by Parliament, 1st reading	T8-0372/2019	Summary
14/05/2019	Act adopted by Council after Parliament's 1st reading		
20/05/2019	Final act signed		
20/05/2019	End of procedure in Parliament		
07/06/2019	Final act published in Official Journal		

Technical information

Procedure reference	2016/0362(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation

Legislative instrument	Directive
	Amending Directive 98/26/EC 1996/0126(COD) Amending Directive 2002/47/EC 2001/0086(COD) Amending Directive 2004/25/EC 2002/0240(COD) Amending Directive 2005/56/EC 2003/0277(COD) Amending Directive 2007/36/EC 2005/0265(COD) Amending Directive 2011/35/EU 2008/0009(COD) Amending Directive 2012/30/EU 2011/0011(COD) Amending Directive 2014/59/EU 2012/0150(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/08585

Documentation gateway

Legislative proposal		COM(2016)0852	23/11/2016	EC	Summary
Document attached to the procedure		SWD(2016)0377	23/11/2016	EC	
Document attached to the procedure		SWD(2016)0378	23/11/2016	EC	
Committee draft report		PE610.856	27/09/2017	EP	
European Central Bank: opinion, guideline, report		CON/2017/0047 OJ C 034 31.01.2018, p. 0017	08/11/2017	ECB	Summary
Amendments tabled in committee		PE616.823	31/01/2018	EP	
Amendments tabled in committee		PE616.824	31/01/2018	EP	
Amendments tabled in committee		PE616.907	01/02/2018	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0218/2018	25/06/2018	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2019)001585	15/02/2019	CSL	
Text agreed during interinstitutional negotiations		PE636.102	15/02/2019	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0372/2019	16/04/2019	EP	Summary
Draft final act		00048/2019/LEX	20/05/2019	CSL	
Commission response to text adopted in plenary		SP(2019)440	08/08/2019	EC	

Additional information

Research document	Briefing

Final act

Directive 2019/879
OJ L 150 07.06.2019, p. 0296 Summary

Corrigendum to final act 32019L0879R(02)

OJ L 283 31.08.2020, p. 0002

Bank recovery and resolution: loss-absorbing and recapitalisation capacity of credit institutions and investment firms

PURPOSE: to revise the Minimum Requirement for own funds and Eligible Liabilities (MREL) and implement the total loss absorbing capacity (TLAC) for credit institutions and investment firms.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: Directive 2014/59/EU of the European Parliament and the Council on the Bank Recovery and Resolution Directive (BRRD) and Regulation (EU) 806/2014 of the European Parliament and of the Council establishing the Single Resolution Mechanism Regulation (SRMR) adopted in 2014 laid down the rules on the recovery and resolution of failing institutions and establish the Single Resolution Mechanism, respectively. This framework has mandated resolution authorities to set for each credit institution or investment firm a minimum requirement for own funds and eligible liabilities ('MREL'), which consist of highly bail-inable liabilities to be used to absorb losses and recapitalise institutions in case of failures.

In 2015, the G-20 endorsed the Total Loss-Absorbing Capacity (TLAC) Term Sheet published by the Financial Stability Board (FSB) in 2015. The TLAC standard requires global systemically important institutions ('G-SIIs') in the Union framework, to hold a sufficient minimum amount of highly loss absorbing (bailin-able) liabilities to ensure smooth and fast absorption of losses and recapitalisation in resolution.

IMPACT ASSESSMENT: the Commission conducted an impact assessment of several policy alternatives. Under the preferred option, the TLAC standard for G-SIIs would be integrated in the existing resolution framework, while that framework would be amended as appropriate to ensure full compatibility with the TLAC standard.

CONTENT: the main objective of the proposed amendments to Directive 2014/59/EU is to implement the TLAC standard and to integrate the TLAC requirement into the general MREL rules by avoiding duplication by applying two parallel requirements. Although TLAC and MREL pursue the same regulatory objective, there are, nevertheless, some differences between them in the way they are constructed. The scope of application of MREL covers not only G-SIIs, but the entire Union banking industry.

The proposed amendments to Directive 2014/59/EU (the Bank Recovery and Resolution Directive) are part of a legislative package that includes also amendments to Regulation (EU) No 575/2013 (the Capital Requirements Regulation), to Directive 2013/36/EU (the Capital Requirements Directive) and to Regulation (EU) 806/2014 (the Single Resolution Mechanism Regulation).

Bank recovery and resolution: loss-absorbing and recapitalisation capacity of credit institutions and investment firms

OPINION of the European Central Bank (ECB) on revisions to the Union crisis management framework.

The ECB welcomes the proposed amending regulations and directive, which aim to implement the total loss-absorbing capacity (TLAC) standard of the Financial Stability Board (FSB) for global systemically important institutions (G-SIIs) established in the Union.

Amendments to the minimum requirement for own funds and eligible liabilities (MREL): the proposed amendments to the Bank Recovery and Resolution Directive (BRRD) and to the Single Resolution Mechanism Regulation (SRMR) provide the possibility for the resolution authority to adjust the MREL recapitalisation amount in order to adequately reflect risks resulting from the business model, funding model and overall risk.

In addition, the ECB considers that the resolution authority should be allowed, after consultation with the competent authority, to adjust the MREL recapitalisation amount upwards to provide for a safety margin. The amount of such a safety margin should be established on a case-by-case basis, dependent on the resolution plan for the credit institution.

The proposed amendments allow a resolution authority to give guidance to an entity on having own funds and eligible liabilities in excess of the MREL, in order to cover the entity's potential additional losses and to ensure market confidence in resolution. The ECB recommends that the proposed MREL guidance is eliminated as it adds complexity to the framework without providing clear benefits.

The ECB also recommends:

- amending the process of addressing or removing impediments to resolvability due to a breach of buffers stacked on top of the MREL to include consultation of the competent authority, as is already provided for in relation to other impediments;
- ensuring that the resolution authorities have more flexibility regarding deadlines in order to ensure that the credit institution has sufficient time, if necessary, to develop the most appropriate strategy to address the breach of buffers;
- clarifying that resolution authorities have the task of monitoring the levels of available MREL eligible instruments and the MREL ratio itself, taking account of all the calculations on deductions;
- clarifying that resolution authorities are also responsible for monitoring compliance with the MREL and informing the competent authority of any breaches and any other relevant events that may affect the ability of the credit institution to fulfil the MREL;
- clarifying the treatment of groups to be resolved according to a multiple entry point approach: (i) the definition of a resolution group should exclude third-country subsidiaries that are points of entry themselves, since these will be treated separately from the rest of the group in the event of resolution; (ii) the amendments should make it clear that compliance with the MREL at resolution entity level must be achieved on a consolidated basis at the resolution group level.

Transitional arrangements for MREL: one key factor in the implementation of an entity-specific MREL is the determination of an adequate transition period.

The ECB proposes that an adequate minimum transition period across credit institutions should be introduced, which should be no shorter than the period applicable to G-SIIs set out in the TLAC term sheet. In addition, the resolution authority should be given the flexibility to determine, on a case-by-case basis, a final period for compliance that is longer than this harmonised minimum.

Early intervention measures: there is a significant overlap between supervisory measures under the CRD, the SSM Regulation (SSMR)

Pre-resolution moratorium tool: due to its exceptional nature and its disruptive impact on contracts, the moratorium tool should be decided in close coordination between all relevant authorities.

The ECB suggests introducing a procedure for the allocation of responsibility for a moratorium to either the competent or the resolution authority, depending on whether the moratorium is imposed before or after the failing or likely to fail determination. Such a procedure should as a rule avoid the imposition of successive moratoria. Only exceptionally, where motivated by the specific circumstances and in compliance with the principle of proportionality, should the resolution authority be able to impose an additional moratorium in order to bridge the gap from the failing or likely to fail determination until resolution action is taken.

The primary objective of a pre-resolution moratorium should be to prevent severe deterioration of a credit institution's balance sheet. Moreover, a moratorium allows additional time for the resolution authority to start preparing for its resolution tasks in parallel. The maximum period for a moratorium should be five working days in total.

An effective pre-resolution moratorium needs to have the broadest possible scope in order to allow for a timely reaction to liquidity outflows.

Bank recovery and resolution: loss-absorbing and recapitalisation capacity of credit institutions and investment firms

The Committee on Economic and Monetary Affairs adopted the report by Gunnar HÖKMARK (EPP, SE) on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/59/EU on the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC.

The committee responsible recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Purpose: the proposal on bank recovery and resolution of bank defaults aims to implement the total loss absorption capacity (TLAC) standard and to integrate the TLAC requirement into the general MREL rules by avoiding duplication by applying two parallel requirements. Although TLAC and MREL pursue the same regulatory objective, there are, nevertheless, some differences between them in the way they are constructed. The scope of application of MREL covers not only G-SIIs, but the entire Union banking industry.

In order to facilitate long-term planning and establish certainty with regards to the necessary buffers, the amended text stipulates that markets need timely clarity about the eligibility criteria required in order for instruments to be recognised as TLAC/MREL liabilities.

Application and calculation of the minimum requirement for own funds and eligible liabilities: Members proposed to take account of the fact that institutions have a high level of own capital in the application and calculation of the MREL.

Institutions should be able to meet the MREL requirements with Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments, so that the same requirements on the MREL apply to institutions with both a higher and a lower stock of own capital.

The objective of a level playing field between institutions should also be pursued at the global level, in particular when aligning the eligibility criteria for the MREL with those for the TLAC minimum requirement.

The amended text obliges Member States to:

- introduce insolvency proceedings in national law governing normal insolvency proceedings for institutions that are not subject to a resolution measure;
- ensure that the resolution authorities, after consulting the competent authority, have the power to suspend payment or delivery obligations arising under a contract to which certain institutions are party where a series of conditions are met.

Eligible liabilities for resolution entities: eligible liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy certain conditions. By way of derogation, liabilities issued before the date of entry into force of this amending Regulation that do not meet the conditions set out in Regulation (EU) No 575/2013 may be included in the amount of own funds and eligible liabilities of resolution entities included in MREL.

It is clarified that liabilities arising from debt instruments with a derivative feature, such as structured notes, shall be included in the amount of own funds and that the entity has demonstrated to the satisfaction of the Board that the instrument is sufficiently loss absorbing and can be bailed-in without undue complexity, taking into account the principles of prudent valuation.

Determination of the minimum requirement for own funds and eligible liabilities: the text specifies that the Board shall ensure that the level of requirement is proportionate to the specificities of the business and funding models of the resolution entity. The recapitalisation amount shall also be supplemented by an additional amount that the Board considers necessary to maintain sufficient market confidence after resolution, taking into account the business model, funding model, and risk profile of the resolution entity.

Determination of the requirement for entities that are G-SIIs: the minimum requirement for own funds and eligible liabilities of a resolution entity that is a G-SII or part of a G-SII shall consist of the higher of:

- a risk-based ratio of 18%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Regulation (EU) No 575/2013;
- a non-risk-based ratio of 6.75%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Regulation (EU) No 575/2013.

Breaches of the requirement: the Board and the other resolution authorities shall monitor on a quarterly basis the fulfilment of the minimum requirement for own funds and eligible liabilities and shall inform the competent authority of any breaches or other relevant events that could affect the fulfilment of the requirement.

Bank recovery and resolution: loss-absorbing and recapitalisation capacity of credit institutions and investment firms

The European Parliament adopted by 532 votes to 71, with 51 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/59/EU on the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows.

Implementation of international standards for loss absorption and recapitalisation

The proposal to amend the Directive concerns the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and the single resolution mechanism (MRU) aims to implement the standard on "total loss absorption capacity" (TLAC) developed by the Financial Stability Board in November 2015. It incorporates the TLAC requirement into the EU's Minimum Capital Requirement and Eligible Commitments (MREL) rules.

The amended text underlines that the objective of the TLAC standard is to ensure that global systemically important banks, referred to as global systemically important institutions ('G-SIIs') in the Union framework, have the loss-absorbing and recapitalisation capacity necessary to help ensure that in, and immediately following, a resolution, those institutions can continue to perform critical functions without putting taxpayers funds, that is public funds or financial stability at risk.

In practice, the amending Directive requires global systemically important institutions to have a greater capacity to absorb losses and recapitalise by defining the requirements in terms of the level and quality of own funds and eligible liabilities (MREL) to ensure an effective and consistent insolvency procedure. It also provides for provisional safeguard measures and possible additional measures for the resolution authorities.

Respect for the MREL

The resolution authorities should be able to require that the MREL is met with own funds and other subordinated liabilities, in particular where there are clear indications that bailed-in creditors are likely to bear losses in resolution that would exceed the losses that they would incur under normal insolvency proceedings.

The resolution authorities should assess the need to require institutions and entities to meet the MREL with own funds and other subordinated liabilities where the amount of liabilities excluded from the application of the bail-in tool reaches a certain threshold within a class of liabilities that includes MREL eligible liabilities.

At the request of a resolution entity, the resolution authorities should be able to reduce the part of the MREL required to be met with own funds and other subordinated liabilities up to a limit that represents the proportion of the reduction possible under Article 72b(3) of Regulation (EU) No 575/2013 in relation to the TLAC minimum requirement laid down in that Regulation.

Confidence buffer

The resolution authority should be able to increase the recapitalisation amount to ensure sufficient market confidence in the institution or entity after the implementation of actions set out in the resolution plan. The requested level of the market confidence buffer should enable the institution or entity to continue to meet the conditions for authorisation for an appropriate period, including by allowing the institution or entity to cover the costs related to the restructuring of its activities following resolution, and to sustain sufficient market confidence. The market confidence buffer should be set by reference to part of the combined buffer requirement under Directive 2013/36/EU.

Protection of retail investors

To ensure that retail investors do not invest excessively in certain debt instruments that are eligible for the MREL, Member States should ensure that the minimum denomination amount of such instruments is relatively high or that the investment in such instruments does not represent an excessive share of the investor's portfolio. This requirement should only apply to instruments issued after the date of transposition of this Directive.

Power to prohibit certain distributions

Resolution authorities should also be able to prohibit certain distributions where they consider that an institution or entity is failing to meet the combined buffer requirement under Directive 2013/36/EU when considered in addition to the MREL.

Power to suspend certain obligations

A resolution authority could temporarily suspend certain contractual obligations of institutions before an institution or an entity is put under resolution, from the moment when the determination is made that the institution or the entity is failing or likely to fail, if a private sector measure which, in the view of the resolution authority, would, within a reasonable timeframe, prevent the failure of the institution or the entity, is not immediately available, and if exercising that power is deemed necessary to avoid the further deterioration of the financial conditions of the institution or the entity. The power to suspend certain contractual obligations would also allow resolution authorities to establish whether a resolution action is in the public interest, to choose the most appropriate resolution tools, or to ensure the effective application of one or more resolution tools.

The duration of the suspension should be limited to a maximum of two business days. Up to that maximum, the suspension could continue to apply after the resolution decision is taken. The resolution authorities should have the possibility to take into account the circumstances of each individual case and to determine the scope of the suspension accordingly.

Entry into force

Member States would have 18 months from the date of entry into force of the Directive. However, the provisions of this Directive concerning public disclosure should be applied from 1 January 2024, in order to ensure that institutions and entities across the Union are allowed an appropriate period to reach the required level of the MREL in an orderly fashion.

Bank recovery and resolution: loss-absorbing and recapitalisation capacity of credit institutions and investment firms

PURPOSE: to strengthen the banking sector by establishing uniform rules for a recovery and resolution framework for institutions and bodies.

LEGISLATIVE ACT: Directive (EU) 2019/879 of the European Parliament and of the Council amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

CONTENT: this Directive amending Directive 2014/59/EU on the recovery and resolution of credit institutions and investment firms aims to implement the standard on Total Loss Absorption Capacity (TLAC) developed by the Financial Stability Board (FSB) in November 2015.

The Directive is part of a comprehensive package of legislative measures that aim to reduce risks in the banking sector and further strengthen banks' ability to withstand potential shocks.

This package contains amendments to the legislation on capital requirements (Regulation (EU) No 575/2013 and Directive 2013/36/EU) that strengthen banks' capital and liquidity requirements. It also consolidates the framework for the recovery of banks in difficulty and the resolution of their failures (Directive 2014/59/EU and Regulation (EU) No 806/2014).

The measures adopted implement reforms agreed at the international level following the 2007-2008 financial crisis with the aim of strengthening the banking sector and addressing outstanding financial stability issues. They include elements approved by the Basel Committee on Banking Supervision and the Financial Stability Board (FSB).

Implementation of international standards for loss absorption and recapitalisation

The Directive incorporates the TLAC requirement into the EU's Minimum Capital Requirement and Eligible Commitments (MREL) rules. The objective of the TLAC standard is to ensure that global systemically important banks, referred to as global systemically important institutions ('G-SIIs') in the Union framework, have the loss-absorbing and recapitalisation capacity necessary to help ensure that in, and immediately following, a resolution, those institutions can continue to perform critical functions without putting taxpayers funds, that is public funds or financial stability at risk.

In practice, the amending Directive requires global systemically important institutions to have a greater capacity to absorb losses and recapitalise by defining the requirements in terms of the level and quality of own funds and eligible liabilities (MREL) to ensure an effective and consistent insolvency procedure. It also provides for provisional safeguard measures and possible additional measures for the resolution authorities.

Subordination policy

Beyond, the existing GSII category, they decided to create a new category of large banks, the so-called top-tier banks with a balance sheet size greater than EUR 100 billion, in relation to which, more prudent subordination requirements are formulated. National resolution authorities may also select other banks (non-GSIIs, non-top tier banks) and subject them to the top-tier bank treatment. Co-legislators agreed an MREL minimum pillar 1 subordination policy for each of these different categories. Moreover, for a sub-set of G-SIIs and top-tier banks and under certain conditions, the resolution authority may also impose an additional Pillar 2 subordination requirement.

For the rest of the banks, the subordination requirement remains a bank-specific assessment based on the principle of no creditor worse off.

The resolution authorities may prohibit certain distributions if they consider that an institution or entity does not meet the overall capital buffer requirement under Directive 2013/36/EU, when this requirement is taken into account in addition to the MREL.

Lastly, the Directive contains rules to ensure that retail investors do not over invest in certain MREL-eligible debt instruments.

ENTRY INTO FORCE: 27.6.2019.

TRANSPOSITION: from 28.12.2020.